Nos. 135, 136 and 138.

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JAMES H. McKEN

Brief of Cox for Appellees

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1897.

Filed Nov. 1, 1897.

THE STEAMTUG "RESOLUTE," A. B. HAMMOND and E. L. BONNER,
Claimants and Appellants,
v.
HENRY E. WILSON, SIDNEY G. WOLFKILL, THOMAS NELSON and CHARLES JAHN, *Libelants and Respondents.*
No. 16,200.

THE STEAMTUG "RESOLUTE," A. B. HAMMOND and E. L. BONNER,
Claimants and Appellants,
v.
GEORGE DOWSETT,
Libelant and Respondent.
No. 16,199.

THE STEAMER "THREE SISTERS," THE OREGON CENTRAL AND EASTERN RAILROAD CO.,
Claimants and Appellants,
v.
R. J. YOUNG, M. BELL, C. A. BELL, H. ROBERTSON, W. HOWELL, W. H. SUTTON, et al.,
Libelants and Respondents.
No. 16,202.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

BRIEF FOR RESPONDENTS.

L. B. COX, W. W. COTTON,
THOMAS O'DAY and C. F. LORD,
Proctors for Respondents.

F. W. BALTES AND COMPANY PRINTERS, PORTLAND, OREGON.

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STATEMENT OF THE CASE.

The principal questions to be decided on these appeals are common to the three cases above entitled, and it has therefore been stipulated that only one brief need be filed by the parties, but that each case shall be decided as if briefs had been filed therein.

The questions presented arise upon exceptions to the libels filed in the District Court of the United States for the District of Oregon. The exceptions were overruled; and the appellants in each case expressly waiving the right to plead further, decrees were entered in each case in favor of the libelants. (Transcripts of record, Three Sisters, pp. 20, 21; Wilson, p. 19; Dowsett, p. 25.) From the decrees so entered, the appellants perfected an appeal to this court and prayed that the question of the jurisdiction of the District Court to render the decrees be certified to this court.

The appeals were allowed, and in the allowance of the appeal the District Court certified in each case as follows: "And this court does hereby certify and make known unto the Supreme Court of the United States that the only question arising upon said appeal is the question as to whether or not, under the facts stated in the amended libel and the exceptions thereto, the court acquired or had jurisdiction to hear and pronounce said decree." (Transcripts of record, Wilson, p. 25; Dowsett, p. 30; Three Sisters, p. 27.) The only question, therefore, presented, and indeed the only question which could be presented to this court for decision, is whether or not the court below had jurisdiction to hear the questions raised by the exceptions to the amended libel and to pronounce any decree thereon.

The facts in the cases are in the main correctly stated in the brief of the appellants and will not be restated here. No reference, however, is made in the appellants' briefs to the facts appearing in each case that the boat against which relief was sought was lawfully seized within the district of Oregon, and that the appellants appeared and claimed the boat and filed their stipulation to pay any decree which might be entered. No question was or could have been raised in the court below as to the jurisdiction of the court below over the *res* or over the appellants. The only question which can therefore be presented to this court on this appeal is whether the court below had jurisdiction of the subject-matter of the action.

There is one statement of fact made in appellants' brief which needs correction. On pages 25 and 49 of the appellants' brief, the statement is made that the vessels libeled were sold with other property for the benefit of the respondents and that respondents have received a portion of the proceeds of the sale. No such fact is stated anywhere in the record, and the statement is without any foundation in fact. On the contrary, the amended libels each allege that the

money claimed by each respondent is due and owing to him, and such allegations are admitted by the exceptions.

Throughout the brief of the appellants, and particularly in the point commencing on page 38 thereof, it would seem to be insisted that the exceptions to the amended libels contain something equivalent to a plea of prior adjudication. No such exception to the libels was ever made, and the libels themselves show that the sale referred to in appellants' brief was not a sale made for the benefit of the respondents as a result of any proceeding instituted by the respondents; but was a sale made under a decree foreclosing a mortgage made by the Oregon Pacific Railroad Company to the Farmers' Loan and Trust Company prior to the time that the services of the respondents were performed. It further appears from the amended libels that at the time of the sale under the said decree, the appellants were notified that the vessels sold were subject to liens in favor of the respondents, and that the appellants bought with notice of such liens and subject thereto. (Transcripts of record, Wilson, p. 17; Dowsett, p. 22; Three Sisters, p. 17.)

ARGUMENT.

I.

The court below had jurisdiction and its decrees should be affirmed.

These appeals are taken directly to this court under the fifth section of the act of congress approved April 5, 1891, upon the ground that the jurisdiction of the District Court is in issue. The only question arising or which can arise upon the appeal is that certified by the District Court, namely, "whether or not under the facts stated in the amended libel and the exceptions thereto this court acquired or had jurisdiction to hear or pronounce the said decree." (Transcripts of record, Wilson, p. 26; Dowsett, p. 31; Young, p. 30.)

In the case of Rhode Island v. Massachusetts, 12 Pet. 718, Justice Baldwin, speaking for this court, defined jurisdiction as follows: "Jurisdiction is the power to hear and determine the subject-matter in controversy between parties to a suit, to adjudicate or exercise any judicial power over them; the question is, whether on the case before a court, their action is judicial or extra-judicial; with or without the authority of law, to render a judgment or decree upon the rights of the litigant parties. If the law confers the power to render a

judgment or decree, then the court has jurisdiction; what shall be adjudged or decreed between the parties, and with which is the right of the case, is judicial action, by hearing and determining it."

In Black on Judgments, Vol. I, Sec. 215, it is said: "In order to the validity of a judgment, the court must have jurisdiction of the persons, of the subject-matter, and of the particular question which it assumes to decide. It cannot act upon persons who are not legally before it, upon one who is not a party to the suit, upon a plaintiff who has not invoked its arbitrament, or upon a defendant who has never been notified of the proceeding. It cannot adjudicate upon a subject which does not fall within its province as defined or limited by law. Neither can it go beyond the issues and pass upon a matter which the parties neither submitted nor intended to submit for its determination."

At the time of the seizures, the Resolute and the Three Sisters were within the district of Oregon and were lawfully seized by the marshal of the court below. As a result of such seizure, the appellants appeared in the three cases, gave their bond and obtained the release of the vessels. (Transcripts of record, Dowsett, p. 7; Wilson, p. 5; Three Sisters, p. 6.) The court below therefore had jurisdiction of the persons and of the res.

The libels presented questions coming within the admiralty jurisdiction, and the court below therefore had jurisdiction over the subject-matter. In ex parte Gordan, 104 U. S. 516, this court said:

"The judicial power of the United States extends to 'all cases of admiralty and maritime jurisdiction' (Const., Art. 3, Sec. 2); and congress, by Sec. 563, Subd. 8, of the Revised Statutes, committed the exercise of this power in most cases primarily to the District Courts. Admiralty jurisdiction extends to maritime contracts and service, and to torts or injuries of a civil nature, committed on navigable waters. (The Belfast, 7 Wall. 624.) The District Courts have the power to hear and decide all cases arising under this jurisdiction, and when a prohibition is applied for, the question presented is not whether a libelant can recover in the suit he has begun, but whether he can go into a court of admiralty to have his rights determined."

The court below therefore had jurisdiction of the parties and of the subject-matter of the action. It therefore had a right to decide the questions presented by the exceptions to the libels. It had the vessels within its custody, and

therefore had power to enforce any decree against the thing which it might render. If it rendered an incorrect judgment upon the questions presented, its error in this regard would not affect its jurisdiction.

As stated by Mr. Justice Story in ex parte Watkins, 7 Pet. 572, "the jurisdiction of the court can never depend upon its decision upon the merits of a case brought before it; but upon its right to hear and decide it at all."

The question under consideration has been presented to this court and to the Circuit Court of Appeals for the Ninth Circuit, and in each case it has been held that the jurisdiction of the court below was not in issue within the meaning of the act of 1891, when the court below had jurisdiction of the subject-matter and of the parties.

In Smith v. McKay, 161 U. S. 356, an appeal was taken to this court, under the act of 1891, on the ground that the cause was one in which the jurisdiction of the court below was in issue; and the appellants sought to have this court review the action of the Circuit Court in entertaining the jurisdiction of the bill in equity in a case in which, as the appellants alleged, it appeared that the complainant had a plain, adequate and complete remedy at law. This court held that no question of jurisdiction was presented; and upon this subject said (p. 358):

"When the requisite citizenship of the parties appears, and the subject-matter is such that the Circuit Court is competent to deal with it, the jurisdiction of that court attaches, and whether the court should sustain the complainant's prayer for equitable relief, or should dismiss the bill with leave to bring an action at law, either would be a valid exercise of jurisdiction. If any error were committed in the exercise of such jurisdiction, it could only be remedied by an appeal to the Circuit Court of Appeals."

In Schunk v. Moline, Milburn & Stoddard Co., 147 U. S. 500, the Moline company commenced a suit against Schunk in the Circuit Court of the United States for the District of Nebraska, on several notes, some of which, amounting to $530.09, were past due, while others, amounting to $1,600.64, were not then due. Under the provisions of the state statutes authorizing the issuance of an attachment in certain cases on a claim before it is due, an attachment was issued against the property of the defendant. It was claimed by the defendant (p. 506) that a plaintiff in a federal court could not avail himself of the right given by a state statute to attach for a claim not yet due; that state statutes can

confer no jurisdiction on the federal courts; and that, therefore, the Circuit Court had no jurisdiction to issue the attachment in the case. It was held, however, that the court having jurisdiction of the subject-matter and of the parties had a right to hear and determine in the exercise of such jurisdiction whether the plaintiff was entitled to the extraordinary relief by way of attachment; and that if it be conceded that it erred in granting such relief, it would simply be a matter of error and not one of jurisdiction.

In Laidlaw v. Oregon Railway & Navigation Company, 81 Fed. Rep. 876, a libel in rem was filed in the District Court for Oregon, to recover damages for the death of the libelant's intestate. The libel was based upon a local statute of Oregon which required that the action should be commenced within two years after death. Exceptions were filed to the libel on the ground that the proceeding was not instituted within the time limited by the state statute, and that therefore the libelant under the decision in The Harrisburg, 119 U. S. 199, had not brought himself within the statute, and therefore, under the decision in the case of The Corsair, 145 U. S. 335, there was no lien and the court was without jurisdiction. This exception was sustained, and from the decree dismissing the libel the libelant appealed to the Circuit Court of Appeals. A motion was made to dismiss the appeal, on the ground that the only question in issue was the jurisdiction of the District Court. This motion was denied on the ground that the subject-matter was within the admiralty jurisdiction of the court and there was no doubt about the jurisdiction of the court over the parties and over the res.

In the present case, the subject-matter of the action was within the jurisdiction of the court below, and the res was lawfully within its custody. This being so, the question raised by this appeal as to the jurisdiction of the court below must be decided in favor of the respondents, and decree appealed from be affirmed.

II.

The questions argued in appellants' brief are not jurisdictional.

Appellants' brief does not discuss any question involving the jurisdiction of the parties or of the subject-matter of the action; but states, on page 13 of the brief, four questions which are claimed to be jurisdictional and therefore presented by this appeal. These four questions, in the language of appellants' brief, are the following:

"First—That the incidents of a receiver's contract attached to the contracts of employment, and no admiralty liens arose therefrom.

"Second—Regardless of the decision of this point, we contend that the matters have been thoroughly and finally determined by the decree of the court of equity, and cannot be re-examined in any court.

"Third—That the amended libels show that the statute of limitations has barred those claims which are based on the Oregon statutes.

"Fourth—That the claim assigned was, by reason of the assignment, divested of an admiralty lien, and, in consequence, a court of admiralty has no jurisdiction to enforce its payment by a proceeding in rem."

The questions stated by the appellants are restated on pages 14 and 15 of their brief, and practically amount to the following, namely:

First—Did the employment of the respondents by the receiver of the Oregon Pacific Railroad Company under the facts shown by the libels give rise to a maritime lien enforceable in admiralty by a proceeding in rem?

Second—If the maritime lien arose, did the sale of the libeled vessels and other property of the Oregon Pacific Railroad Company by the Circuit Court of Benton county operate as an adjudication of the rights of the respondents which cannot be set aside or reviewed by a court in admiralty?

The very statement of the questions which the appellants seek to present to this court is a full and complete concession that the court below had jurisdiction and that the questions themselves are not questions involving the jurisdiction of the court. Take the first question: Did a maritime lien arise in favor of the respondents by virtue of their employment? What court has power to decide whether under any given state of facts a maritime lien arises? No court has this power in an original proceeding save one of the District Courts of the United States.

In re Fassett, 142 U. S. 479.
Ex parte Gordan, 104 U. S. 515.
Hein v. Trevor, 4 Wallace, 555.
The Belfast, 7 Wallace, 624.

The vessel was within the territorial jurisdiction of the District Court of the District of Oregon, and that court was therefore the only court which had the power to decide in an original proceeding whether under the facts stated in the

amended libel a maritime lien arose in favor of the respondents.

On page 14 of the appellants' brief it is stated that admiralty has no jurisdiction in rem to enforce a demand for seamen's wages or other obligation arising ex contractu unless the person instituting the proceeding is entitled to a maritime lien at the time the proceedings are brought. This statement is not correct. A court of admiralty having jurisdiction of the subject-matter and in custody of the res has jurisdiction in rem to enforce a demand whenever the court decides that the person instituting the proceeding is entitled to a maritime lien. Whether or not the facts give rise to a maritime lien is purely a question of fact going to the merits of each particular case, and any decree based upon this question of fact is one within the jurisdiction of the court and is one involving the merits alone; and when such decree is entered it can be enforced according to the forms of admiralty. Any error committed in this regard must be reviewed in the Circuit Court of Appeals.

After stating the proposition we have just examined, appellants then argue that because of certain facts in the present case no maritime lien arose in favor of the libelants, or if it did arise, such lien has been lost and therefore there is no maritime lien and the court was without jurisdiction. The proposition of the appellants is this: No facts creating a lien, no lien; no lien, no jurisdiction. If the argument of the appellants be followed to its legitimate conclusion, the result would be that in every proceeding in rem in admiralty an appeal could be taken to this court upon the disputed questions of fact raised in the court below, and this court would be called upon to consider such disputed questions of fact, on the ground that they raised issues as to the jurisdiction of the court below. Every maritime lien, whether arising out of contract or of tort, depends for its existence upon the proof or admission of certain facts. If a seaman renders no services, he has, of course, no lien upon the vessel, notwithstanding his allegation of services performed. The District Court, however, has undoubted jurisdiction to determine whether the services were or were not performed. According to the argument of the appellants, a decree of the District Court in favor of the seaman would present a question involving the jurisdiction of the court below; and this court would have to pass upon the disputed question of fact as to whether the services were performed; for, if the services were not performed, the seaman would

have no lien; and, according to appellants' argument, the court below would be without jurisdiction to enter the decree. In cases of collision, there is no lien unless the collision actually occurred or unless the vessel against which the lien is claimed was at fault. Whether the collision occurred or whether the vessel was at fault, are purely questions of fact going to the merits; and the court having jurisdiction of the subject-matter and custody of the vessel would have jurisdiction to enter a decree either for or against the lien. According to appellants' contention, however, the disputed questions of fact in every collision case would raise issues involving the jurisdiction of the court below. Similar illustrations will readily suggest themselves as to every proceeding in rem in admiralty. Are all of such questions to be passed upon by this court, on the ground that the jurisdiction of the court below is in issue?

So, a court of equity has no power to grant relief unless facts are established calling for the exercise of its equitable powers. Such facts do not put in issue the jurisdiction of the court below. This court has held that where a court of equity has jurisdiction of the subject-matter and of the parties, the granting or withholding of the relief is purely a question going to the merits, and not one involving the jurisdiction of the court; and any error committed in the decision of such question can only be reviewed by the Circuit Court of Appeals.

Smith v. McKay, 161 U. S. 355.

Under this decision, it follows that where a court of admiralty has jurisdiction of the subject-matter and has made a valid seizure of a vessel, it has jurisdiction, and its decree that a maritime lien does or does not arise from the facts established or admitted is purely a decision upon the merits, and the party aggrieved must appeal to the Circuit Court of Appeals.

Take the second question and assume that by virtue of the facts stated a maritime lien arose, what court alone had power to decide whether the proceedings in the state court had or could divest such maritime lien? If a maritime lien arose, the enforcement of such lien was within the exclusive jurisdiction of the District Court, and no action of any person whomsoever could transfer jurisdiction over such lien to the state court of Oregon; and no action of such state court could extinguish such lien.

Moran v. Sturgis, 154 U. S. 256, 285.

In the case last cited, this court said: "As has been seen, maritime liens are incumbrances on vessels by operation of law, and neither the death nor the insolvency of the owner can divest or extinguish them or transfer jurisdiction over them to courts for the settlement of the estates of decedents or insolvents, although for the purposes merely of such settlement these are the appropriate tribunals. In the orderly administration of justice the representatives of such estates should apply to the court which alone has cognizance to ascertain and enforce these exceptional interests in the thing itself, which accompany it wherever it goes and into whosesoever hands it comes, and which cannot be displaced by the action of other courts in invitum."

If no court other than a court of admiralty can displace a maritime lien when it has once arisen, surely a court of admiralty is the only court which has jurisdiction to hear and decide the claim that a maritime lien has been divested by a proceeding had in a state court in equity.

The second question stated is discussed at length in appellants' brief, commencing on page 38. This point is equivalent to a plea of prior adjudication. Certainly, any court in which such a plea was presented has undoubted jurisdiction to hear such plea and decide thereon. If this be not so, then it would only be necessary to set up a plea of prior adjudication and then insist that the court was without jurisdiction to hear it. According to appellants' argument, the court would be without jurisdiction to hear the plea, and such plea would therefore have to remain forever undecided. On the contrary, the court having jurisdiction to hear the plea, a decree of the court upon the plea whether it be right or wrong is clearly within its jurisdiction, and the decision of the court upon the plea does not involve in any way whatsoever the jurisdiction of the court.

We therefore insist that none of the questions discussed in appellants' brief are jurisdictional, and that therefore such questions cannot be examined on this appeal by this court. We further insist that an examination of the questions involving the merits show that the decrees below should be affirmed. The carefully prepared brief of the appellants would seem to justify an examination of the various propositions stated therein; and, without entering upon any extended discussion thereof, it will be our object to show that the various reasons assigned for reversing the decrees are unsound.

III.

Seamen employed by a receiver appointed to operate a vessel are entitled to a lien for wages.

Commencing on page 22 of the appellants' brief, the general objection is urged against all of the respondents that owing to the fact that they were employed by the receiver of the Oregon Pacific Railroad Company no lien for wages due arose in their favor. It is a fact admitted in all of the cases that the respondents were employed on the vessels libeled by a receiver appointed by the Circuit Court of the State of Oregon for the County of Benton, in the suit of the Farmers' Loan & Trust Company v. the Oregon Pacific Railroad Company, and that by the order of the court appointing the receiver the receiver was required, authorized and directed to continue the operation as a going concern of the railroad of the defendants in said suit and of the steamboat and steamship lines of the defendant operated in connection therewith, including the libeled vessels; and that the receiver during the course of such operation hired the said libelants to work on board of the libeled vessels.

The court appointing the receiver authorized him not simply to keep and preserve the property placed in his hands but to continue to operate the same as a going concern. The cases of Esteban de Antunano, 31 Fed. Rep. 920, Parker v. The Little Lacme, 43 Fed. Rep. 925, and The Augustine Kobbe, 37 Fed. Rep. 695, have no application to the present case. In each of those cases the officer in whose charge the vessel was placed was an officer whose duty it was to keep and preserve the vessel and not to operate the same. Two principles are stated by the cases mentioned, namely:

First. The sheriff or marshal in whose custody a vessel is placed for safe keeping has no right and authority as against the owner or as against the creditor seizing the vessel, to operate the same; and having no right to operate the vessel such officer could not by his act create any lien.

Second. That the owner of a vessel has no right while the vessel is in the custody of the sheriff or marshal for the benefit of a creditor to make contracts for the vessel so as to create liens which would be prior to the lien or claim sought to be enforced by the creditor who had placed the vessel in the hands of the marshal or sheriff.

If any other principle were adopted the sheriff or marshal placed in charge of a vessel for safe keeping could so burden the vessel with liens as to practically bar the claim of the

creditor for whose benefit the marshal or sheriff by his process was required to safely "keep" the vessel, and the owner of the vessel could while it was in custody so far burden it with liens as to practically prevent diligent creditors seizing the vessel from ever enforcing their claim with success.

For the purpose of showing the exact point decided in each case, the cases cited will be examined. In the case of The Augustine Kobbe, 37 Fed. Rep. 702, the facts are stated in the preceding case commencing on page 696. As will be noted on page 698, the vessel was sold and money paid into court and the contest arose as to priority among the various persons claiming liens. Martin, Taylor & Company were the charterers of the vessel for a voyage to commence at Mobile. The vessel was seized at Mobile on a claim for material furnished to her prior to the taking effect of the charter. It was held that after the seizure Martin, Taylor & Company could not obtain a lien for moneys advanced under the charter. The court expressly says that Martin, Taylor & Company were actually notified of the seizure and that thereby the contemplated voyage was broken up and abandoned, and as the claim (p. 702) was not necessarily for the due care and preservation of the vessel, it could not be recognized as a lien, and cited The Young America, 30 Fed. Rep. 790. In other words, the charterer and the owner could not after the seizure go on increasing the damages of the charterer as against the right and claim of a material man having a lien prior to both of them.

In the Esteban de Antunano, 31 Fed. Rep. 920, the vessel was placed in the hands of a sheriff whose duty it was, as stated on page 925, to look after and provide for the necessities and preservation of the ship, and the court held that the presumption was that the sheriff did his full duty in the premises. After the seizure, the crew remained on board of the vessel, and the passengers and crew consumed the provisions supplied for the voyage, and, when they ran short, various parties, the intervening libelants herein (as stated by the court, commencing at the bottom of page 921), ***at the instance of the master and without the order of the sheriff***, continued to furnish supplies to meet the alleged necessities of the officer and the crew. As a result of the suit in which the vessel was placed in the hands of a sheriff, the vessel was afterwards sold, but while the vessel was in the hands of the sheriff libels were filed in the District Court of the United States and the vessel was seized and released on bond. The court held, commencing at the bottom of page 924, that the contract with material men was

not made by any representative of the ship authorized to contract, and therefore there was no lien, and that the supposed necessities of the ship and her crew would warrant no person in interfering without the authority of the sheriff or of the court. In the present case, the receiver in all things represented the rights of the complainant, the Farmers' Loan & Trust Company, and the rights of the defendant, the Oregon Pacific Railroad Company, and had a right under the orders of the court to make contracts of all kinds whatsoever in relation to the operation of the boats, and actually made the contract in question by the authority of the court. Applying the converse of the reasoning in the cases cited, it is clear that a lien would and should exist.

In Parker v. The Little Acme, 43 Fed. Rep. 925, a sheriff by virtue of a writ of execution seized a steamboat and ran the boat a few days without the consent or knowledge of the owner. The case does not state whether the boat was sold, but apparently the boat would seem to have been discharged and have been returned to the owner. Reference is made to a Pennsylvania case showing the duties of sheriff to safely keep property, and the decision is that the sheriff had no authority to operate the boat and to undertake to charge the owner or the creditor with the expense of such operation. In other words, the sheriff had no right by virtue of his writ requiring him to safely "keep" the boat to enter into contracts concerning the operation and running of the boat.

On the argument in the court below, as will be seen by reference to the opinion of the court below found in the transcript of record in the Wilson case, page 12, the appellants relied among other cases upon The Young America, 30 Fed. Rep. 790, cited in the Augustine Kobbe, 37 Fed. Rep. 702, referred to. The case of The Young America states clearly the rule and the reasons therefor and the limitations which the court must necessarily place upon the rule itself, and is a clear and positive authority in favor of the respondents. In that case, a vessel was arrested in admiralty, and afterwards, by direction of the libelant's proctor, the vessel was allowed by the marshal to pursue her ordinary business as before. The court held that the delivery of the vessel to the owner by the marshal, though without authority, did not defeat the jurisdiction of the court, but that the vessel was subject to all liens arising as the result of its operation by the owner after the delivery by the marshal. Upon this subject the court said:

"Where a plaintiff, as in this case, obtains only a nominal arrest of a vessel and virtually directs that she be left to pur-

sue her ordinary business, with its attendant liabilities to other persons, in contract or in tort, he must be held to have waived the benefit of the custody of the court as a protection against other liens, and to be estopped from claiming, as against third persons, the exemptions that belong only to a vessel in actual custody. Otherwise, not only would third persons be misled and deceived, but ready means would be offered of running vessels without liability to any further liens at all. Such a practice would be a plain abuse of the process of the court. For these reasons I must hold the claims of the material men to be liens on the tug."

In the present case, the Farmers' Loan & Trust Company sought the receivership, and the defendant, the Oregon Pacific Railroad Company, acquiesced therein for the purpose of having the railroad and vessels operated as a going concern. The Farmers' Loan & Trust Company, for the benefit of itself and of the defendant, procured an order of the court requiring the receiver to continue the operation of the vessels and to hire the necessary employees. The receiver was not simply to keep the vessel, but he was required to operate it; and necessarily all the parties interested must be held to have waived any benefits which they might otherwise have derived as a result of the placing of the vessel in the custody of the receiver.

The case of Paxton v. Cunningham, 63 Fed. Rep. 132, decided by Mr. Justice Gray in the Circuit Court of Appeals of the First Circuit, holds that where a vessel is placed by a court in the hands of a receiver for operation, such vessel is subject to all of the ordinary incidents of operation, including liens arising as the result of torts committed by the vessel. Indeed, the adoption of any other rule would at once establish a privileged class of vessels whose operation would not give rise to maritime liens and which would be entirely withdrawn from the jurisdiction of courts in admiralty. The principle contended for by the appellants would enable the owners of vessels, through the aid of friendly creditors or mortgagees, to have receivers appointed of the vessels and the operation of the vessels continued without subjecting such vessel to maritime liens arising from operation of any kind whatever. Such a practice, as stated in The Young America, 30 Fed. Rep. 792, would be a plain abuse of the process of the court and a fraud upon persons injured by or dealing with the vessel.

In the present case, the Farmers' Loan & Trust Company, and the defendant, the Oregon Pacific Railroad Company, procured or consented to an order of the court that the

vessels against which the liens are sought to be enforced in the present proceedings should be operated, and the court so ordered. As a result of such consent and order, every principle of justice requires that the vessels when so operated should be subjected to maritime liens arising as the result of torts committed by or contracts made on behalf of the vessels. We think it should be further held, where a court appointing a receiver of a vessel has ordered that the vessel shall be operated, that the court has impliedly consented that the custody of the court during its receivership over the vessel is liable to be divested by seizures in admiralty courts to enforce liens arising as the result of such operation. Upon this question the opinion in Paxton v. Cunningham, 63 Fed. Rep. 132, is clear and convincing.

On page 23 of the appellants' brief cases are cited in support of the proposition that to sustain a maritime lien there must in all cases be a credit of the ship. All of the cases cited, with the exception of the Sirocco, 7 Fed. Rep. 599, arose out of supplies furnished to the vessel. A maritime lien in favor of seamen does not arise upon contract, but is given by the general maritime law whenever seamen are lawfully employed on board. The distinction between liens for supplies and liens for seamen's wages is clearly stated in The International, 30 Fed. Rep. 375, 376. In that case, after stating the rule applicable to claims for supplies, the court says (p. 376):

"This results, however, from the fact that in this country the general maritime law in reference to a lien for supplies has been only partially adopted, and that such a lien is admitted, not as the legal incident to the mere furnishing of supplies, but only upon special circumstances which it is incumbent upon the material man to prove as conditions of his lien,—such, for instance, as the absence of the vessel from her home port; the absence of her owner from the place where the supplies are furnished, or, if present, his agreement to the lien; the ship's necessity for supplies; and the necessity of a credit to the vessel to obtain them. There are no such conditions applicable to a seaman's lien for wages. Our maritime law, as respects wages, conforms to the general law of the seas, which gives a seaman a lien upon the ship for his wages, as Cleirac says, 'so long as a nail remains.' His service is rendered primarily to *the ship;* and, in the view of the maritime law, the ship is primarily liable. The lien arises, therefore, as the legal incident of his service. It does not depend upon contract (The Minerva, 1 Hagg. 352), but

is given by the general maritime law, whenever he is lawfully employed on board. Macl. Shipp. 248, 249."

The Sirocco, 7 Fed. Rep. 599, cited by the appellants on page 23, is the only case bearing upon the question of seamen's wages. In that case, it was expressly held that the presumption of the maritime law is that services performed by seamen on board a vessel are rendered upon the credit of the vessel and by that law seamen acquire a lien for their wages in all cases, unless it be made to appear that a waiver of the lien and an exclusively personal credit formed a part of the hiring. According to the appellants' own argument, no exclusively personal credit formed a part of the contract of the hiring of the respondents, for the reason that it is strenuously insisted, on page 28 of the appellants' brief, that no personal liability of any kind whatsoever on the part of the receiver arose as the result of the contract of employment of the respondents by the receiver. The case of the Sirocco, referred to by the appellants, clearly sustains the views of the respondents and is cited in the following cases in support of the proposition that a seaman's lien on the ship for his wages does not depend upon contract, but is fixed by law as an incident of his lawful employment on board, and could not be waived without the seaman's express consent.

The International, 30 Fed. Rep. 375, 377.
The L. L. Lamb, 31 Fed. Rep. 29, 32.
The Atlantic, 53 Fed. Rep. 607, 608.

In the International, *supra*, it was held that an express contract waiving the lien would be held void in admiralty unless there was some corresponding benefit to the seaman to sustain it, and reference is made to section 4,535 of the Revised Statutes. This section provides that "no seaman shall by any agreement, other than is provided by this title, forfeit his lien upon the ship or be deprived of any remedy for the recovery of his wages to which he would otherwise have been entitled." No express contract waiving the lien, and no contract of the character mentioned in section 4,535 of the Revised Statutes, is shown to have been made by any of the respondents, and no consideration was ever given to any of the respondents for the making of any contract, express or implied, waiving any liens upon the vessels arising as the result of the services performed by the respondents. The respondents performed services as seamen upon the vessels libeled, under a lawful contract of employment, and as a legal incident of such employment a lien upon the vessels arose in favor of the respondents.

The Sirocco, 7 Fed. Rep. 599.
The International, 30 Fed. Rep. 375.
The L. L. Lamb, 31 Fed. Rep. 29.
The Atlantic, 53 Fed. Rep. 607.

Instead of annexing a lien to the contract as an incident thereto, the claimants insist that as a result of the employment of the respondents by the receiver the respondents must be held to have waived their lien. Any such contention is an attempt to evade the provisions of section 4,535 of the Revised Statutes, already referred to, and this statute is in exact accordance with the principle of numerous decisions in the admiralty courts as respects the validity of stipulations in seamen's contracts waiving liens.

The International, 30 Fed. Rep. 377.

What right had the Farmers' Loan & Trust Company and the Oregon Pacific Railroad Company to place a vessel in the hands of a receiver appointed by a state court and continue the operation of such vessel for the benefit of the bondholders, and then insist that by such a course of action the parties to the suit have rendered ineffective section 4,535 of the Revises Statutes? Any such course of proceeding is practically a fraud upon the class of men whom it is the duty of an admiralty court to protect. A decision in favor of the appellants would simply be to say that the creditors and owners of a vessel can, by placing it in the hands of a receiver, continue to operate the vessel for their own benefit and without subjecting the vessel to the admiralty jurisdiction of the United States courts, and without being subject to the paramount law of the land and to the statutes enacted by congress prohibiting the waiving of seamen's liens.

On pages 30 and 31 of the brief for the appellants, it is insisted that no lien can arise out of any employment unless at the same time there arises a personal right of action, and that in the present case there is no personal right of action against the receiver, and therefore there can be no lien. The rspondents were lawfully employed on board the vessel seized, and as a result of such employment, under the cases cited, a lien arose as a legal incident of the employment. The receiver, it is true, would not be liable in his individual capacity, on account of contracts lawfully made by him as receiver, but nevertheless the receiver in his official capacity would be so liable, and any judgment recovered against him would be payable out of the funds in his hands as such receiver. Trustees, assignees for the benefit of creditors, executors and administrators do not, by contracts lawfully made in their representative capacity, subject themselves to personal liability,

and any judgment recovered as the result of such contract must be satisfied out of the funds held by such persons in their respective capacity. The personal-liability argument made by the appellants would therefore prevent maritime liens arising out of contract from attaching to any vessel operated by a trustee, an assignee or an executor or administrator. If such a principle were adopted by this court, steps would soon be taken through the appointment of receivers and trustees to relieve the admiralty courts of their jurisdiction in all cases arising out of contract.

But, on the contrary, as was said by this court in Moran v. Sturgis, 154 U. S. 285, "maritime liens are incumbrances placed on vessels by operation of law, and neither the death or insolvency of the owner can divest or extinguish them or transfer jurisdiction over them to courts for the settlement of the estates of decedents or insolvents. * * * In the orderly administration of justice, the representatives of such estates should apply to the court which alone has cognizance to ascertain and enforce those exceptional interests in the thing itself, which accompanied wherever it goes and into whosesoever hands it comes."

On page 37 of the appellants' brief, inquiry is made, what commercial necessity exists for a lien in admiralty when the property is at all times retained within the jurisdiction of the equity court, and when the court is bound under its rules to sell the vessels, if necessity arises, to pay the employees? The answer to this is that a seaman performing services on board a vessel has, as a matter of law, a maritime lien of a superior character, and is not bound to go into a court of equity, where, as appellants state on page 27 of their brief, equity knows no favor, but would place such seaman on the same footing as every other creditor of the receiver, and where the argument of the seamen that in admiralty they would be entitled to a priority would be met, as stated on page 48 of the appellants' brief, as follows: "The court of equity could have but one answer. It was not administering admiralty rules. That the contracts in question were made with the court of equity, and no favoritism was permitted by its doctrines; that they were limited to the remedy given by equity."

Under the decision in Moran v. Sturgis, 154 U. S. 256, the respondents were clearly not required to submit themselves to the jurisdiction of a court where any such answer could be made to the claim that the respondents were entitled to a maritime lien of a superior character.

IV.

The liens of the respondents were not and could not be divested by any proceedings had in the state court.

Commencing on page 38, the appellants, conceding that the liens in favor of the libelants arose, argue at length that the sale of the railroad and vessels of the Oregon Pacific Railroad Company by the state court under the foreclosure decree was an adjudication of the rights of the respondents and divested the liens claimed by the respondents. No exception equivalent to a plea of prior adjudication was filed by the appellants to any of the amended libels; and it is conceded, on page 21 of the appellants' brief, that the question is not raised in any way whatsoever except by the second exception to each of the libels, namely, "that the libel shows that this court has no jurisdiction in the premises." Such exception could not possibly amount to a plea of estoppel as the result of any prior adjudication.

There never was any adjudication of the rights of the r spondents by the Circuit Court of Benton county, and the respondents have never received, as stated on pages 25 and 49 of the appellants' brief, any portion of the proceeds resulting from the sale of the railroads and boats of the Oregon Pacific Railroad Company. On the contrary, the libels allege, and the allegation is admitted, that the sums claimed by the respondents and each of them are due and owing, and that at the time of the sale the appellants were notified that the respondents claimed liens upon the vessels and bought with notice of such liens. No payment or part payment was made, and it is admitted, and such is the fact, that the sums now claimed by the respondents are due and owing.

On page 49 of appellants' brief it is stated that a suit to foreclose a mortgage is in its nature a proceeding ***in rem***. After citing authorities applicable to judgments ***in rem***, it is argued that as a result of the foreclosure sale of the railroad and vessels of the Oregon Pacific Railroad Company the liens of the respondents were divested. A suit to foreclose a mortgage is not an action ***in rem***, though sometimes loosely referred to as such, and a judgment entered therein is only conclusive between the parties. The distinction between a foreclosure suit and an action ***in rem*** is stated in Freeman v. Alderson, 119 U. S. 187, where, among other things, it is said:

"There is, however, a large class of cases which are not strictly actions *in rem*, but are frequently spoken of as actions *quasi in rem*, because, though brought against persons, they only seek to subject certain property of those persons to the discharge of the claims asserted. Such are actions in which property of non-residents is attached and held for the discharge of debts due by them to citizens of the state, and actions for the enforcement of mortgages, and other liens. Indeed, all proceedings having for their sole object the sale or other disposition of the property of the defendant to satisfy the demands of the plaintiff, are in a general way thus designated. But they differ, among other things, from actions which are strictly *in rem*, in that the interest of the defendant is alone sought to be affected, that citation to him is required, and that judgment therein is only conclusive between the parties."

The respondents were never parties to the foreclosure suit, were never called upon to appear therein on account of their interest, and, under the decision in Moran v. Sturgis, 154 U. S. 256, could not by any process of any kind whatsoever have been compelled to submit themselves to the jurisdiction of the equity court. That the respondents did not so submit themselves appears conclusively from the allegations of the amended libels, which are admitted by the exception.

If a lien arose in favor of the respondents as a result of their employment by the receiver, such lien was superior to the lien of the mortgage, and on familiar principles no sale under the mortgage could defeat the lien. The sale under the decree of foreclosure simply sold the interest of the Oregon Pacific Railroad Company in its railroad and property conveyed by it to the Farmers' Loan & Trust Company long prior to the creation of the liens; and was not a sale of any interest in the vessels acquired by the respondents as the result of their maritime lien.

V.

The lien of a seaman for wages may be assigned, and a *bona fide* assignment carries to the assignee all of the rights and securities of the original holder.

Libelant Dowsett sues on a claim due him personally, and on another claim transferred to him by assignment. The objection was made in the lower court that a lien in admiralty is a personal privilege, and one which cannot be assigned so as to give the assignee a right to maintain a proceeding ***in rem*** in admiralty.

The better considered doctrine of the present day is that the lien of a mariner for wages, as well as other maritime liens, is assignable when it has been perfected, and that an assignment in good faith carries with it to the assignee all the rights and securities of the assignor.

Some of the earlier decisions of the courts of the United States were adverse to this position, but we think the later cases will all be found in its favor. No good reason exists, either in law or in equity, why such liens should not be assignable. To deprive them of this character is to take from them a part of their value, to the manifest injury of the seamen, whom it is the policy of the law to foster and protect. Courts have extended the classes of choses in action which may be assigned until they include liens of every character, unless it be those of mariners, and an exception in their case would be productive of no possible good to them, but on the contrary, would be detrimental to their best interests.

We submit the following authorities:

The New Idea, 60 Fed. Rep. 294.
The American Eagle, 19 Fed. Rep. 879.
The M. Vandercook, 24 Fed. Rep. 472.
The Hull of a New Ship, 2 Ware. 203.
The Sarah J. Weed, 2 Low. 555.
Liberty No. 4, 7 Fed. Rep. 231.
The Victorian, 24 Oregon, 194.
Jones on Liens, Sec. 1798.

VI.

Raabe and Young, respondents in the case of The Three Sisters, are entitled to a lien.

It is contended on page 53 of appellants' brief that a court of admiralty has no jurisdiction to enforce the liens of R. J. Young and George Raabe in the case of The Three Sisters, because such respondents have no lien under the general maritime law, and that any lien claimed by them under the Oregon statutes, referred to on page 12 of appellants' brief, are barred by the limitation contained in section 3706 of said statute.

Two questions are therefore presented:

First. Did Young and Raabe have a maritime lien for the services performed by them?

Second. Is their lien under the boat lien law of Oregon barred by limitation?

It has been held that a "master" of a ship has no lien in admiralty upon the ship itself, but has a lien upon the freight

money coming into his hands. The reason for this rule is that the master of a ship receives all of the income, pays the crew, buys the supplies; and, as a result, there is necessarily an account existing between him and the ship. To allow a person occupying such a relation, and taking the ship to foreign ports, to have a lien upon the ship, would allow the master to cause the vessel to be seized in a foreign port where she might be without any representatives; and before knowledge of the seizure could come to the owner, the master could cause the ship to be sold, and thus unjust claims of the master be paid. A number of exceptions have been introduced to the rule; and, as we understand the rule, it only applies to masters in fact exercising the powers and duties of the master. As a result, a mate succeeding to the command of a ship upon the death of a master does not thereby lose his character as mate, but may sue in admiralty for his wages.

The Brig George, 1 Sumner, 151.

An engineer, the highest officer on board a dredge, and directing the foreman and other hands on board, but having no authority to engage or dismiss hands or purchase supplies, is entitled to a lien.

The Atlantic, 53 Fed. Rep. 607.

The sailing master of a yacht is not a master within the meaning of the rule, and has a lien for his wages.

The Carlotta, 30 Fed. Rep. 378.

In the present case, as alleged by the amended libels, the boats were operated upon a regular route between points and places at which there were regular agents. There was on board the steamer, an officer known as the purser, and the purser and the agents of the receiver collected all of the earnings of the boat, and none of them passed through the hands of Raabe or of Young. It is further alleged that the sole duties of Young and Raabe consisted in navigating the steamers upon routes selected by the receiver, and that during a portion of the time that the said Raabe was employed the steamer was tied up and all the crew with the exception of Raabe were discharged, but the said Raabe was retained to watch the said boat and care for the same, and the only duties performed by Raabe were those of watchman. (Transcript of record, Three Sisters, pp. 15 and 16).

The reason of the rule why a master is not entitled to a lien fails in the present case; and Young and Raabe should be entitled to a lien in admiralty for the same reason that a lien is allowed to the sailing master of a yacht. The captain of a river steamboat, under the circumstances stated in the

libel, is practically nothing but a pilot and navigating officer. The court will note that a part of Raabe's claim is for services rendered partly as watchman in charge of the boat, and that to this portion of his claim the exceptions filed by the appellants do not apply.

If Raabe and Young have no maritime lien for their services as captain, they certainly have a lien under section 3690 of Hill's Annotated Laws of Oregon, and this lien is one which can only be enforced by this court.

The Heine v. Trevor, 4 Wallace, 455.
The Moses Taylor, 4 Wallace, 411.
The Belfast, 7 Wallace, 624.
The J. E. Rumbell, 148 U. S. 1.

The claimants admit the existence of the lien under the Oregon laws, but claim that section 3706 of the Oregon statute bars the action in this court. The court will note that the boat lien law of Oregon consists of seventeen sections found in Hill's Annotated Laws of Oregon, and being sections 3690 to 3706, inclusive. The first section creates the liens. The second section provides for the priority. The third and fourth sections, being 3692 and 3693, read as follows:

"3692. Any person having a demand as aforesaid, instead of proceeding for the recovery thereof against the master, owner, agent or consignee of the boat or vessel, may, at its option, commence an action against such boat or vessel by name.

"3693. Any person wishing to commence an action against a boat or vessel shall file his complaint against such boat or vessel by name ***with the clerk of the Circuit Court of the county in which such boat or vessel may lie or be.*** The complaint shall set forth the plaintiff's demand in all its particulars, and on whose account the same accrued, and shall be verified by the plaintiff or some credible person for him."

All of the succeeding sections relate entirely to the remedy in the state court against the boat or vessel by name. The last section contains the limitation invoked by the appellants, and reads as follows:

"3706. All actions against a boat or vessel under the provisions of this title shall be commenced within one year after the cause of action shall have accrued."

There are several reasons why section 3706 does not apply to the present action:

First. The section by its terms is not a limitation upon the existence of the lien created by section 3690, but is sim-

ply a limitation upon the right of action in the state court created by section 3692.

Second. The section by its terms only requires the action to be commenced within one year after the cause of action accrued, and the cause of action does not accrue until suit could be commenced thereon.

Third. If in any way the cause of action could be said to have accrued prior to the time that suit might be commenced, then the action was stayed as a result of the pendency of the receivership, and the time of such suit is not a part of the time limited for the commencement of the action.

Certain maritime contracts give rise to actions *in personam* without giving rise to any maritime lien. This is illustrated by the two important classes of cases of supplies furnished in a home port and the employment of a master of a ship.

The Lottawana, 21 Wallace, 558.

Willard v. Dorr, 3 Sumner, 91.

The incident of a lien may be annexed to such maritime contract by a state statute, and such statute will be sustained by the admiralty courts of the United States; and the lien being in the nature of a maritime lien can only be enforced in the admiralty courts.

The Lottawana, 21 Wallace, 558.

The J. E. Rumbell, 145 U. S. 1.

Any attempt on the part of the state to confer jurisdiction upon its own courts to enforce such maritime contracts by proceeding *in rem* is void.

The Moses Taylor, 4 Wallace, 411.

The J. E. Rumbell, 148 U. S. 1.

The employment of a master is a maritime contract, and the only assistance which the court of admiralty needed to proceed *in rem* was state legislation creating a lien in favor of the master. If the limitation in the state statute affected the lien, then the admiralty court in enforcing the lien would be bound by the limitation, and would necessarily have to enforce the lien subject to all of the limitations which the state legislation had placed upon it.

Sections 3692 to 3706 are void in so far as they undertake to confer upon the state courts jurisdiction of proceedings *in rem* to enforce maritime contracts.

The Belfast, 7 Wallace, p. —.

Heine v. Trevor, 4 Wallace, 555.

The sections 3690 to 3706, therefore, have no application to liens created by section 3690 arising out of maritime contracts, and such is the construction placed upon the act by

the Supreme Court of the State of Oregon in The Victorian, 32 Pacific Reporter, 1040, 1042. This decision from the highest court of the state construing a state statute is necessarily binding upon this court.

In The Victorian the contention was made that all of the liens created by the original Oregon act of 1853 were maritime liens, and that as a result of the decision in The Heine v. Trevor, sections 3692 to 3706 were void, and that when the legislature amended the lien act in 1876, by giving a lien for the construction of a boat, it could not reasonably be said that the portion of the act giving the remedy had sufficient vitality to continue to live so as to be applicable to the lien created in 1876. The court disposed of this contention in The Victorian on the first half of page 1042, by holding that sections 3692 to 3706 only relate, and can only relate, to the construction liens created by section 3690, and have no application to any of the other liens.

It will further be noted that section 3706 does not by its terms limit the right of lien, but only undertakes to limit the right of action in the state court given by the statute. If the section has provided that the liens created by this act shall only be enforced by actions commenced within one year, then the admiralty court in adopting the lien would necessarily have to adopt the limitation upon it; but the limitation in the present case does not apply to the lien, but only to a right of action, which the admiralty court does not recognize in any way whatsoever. The limitation upon a right of action in the state court is merely a matter of procedure, and when the admiralty court does not adopt the procedure it does not adopt the limitation.

Further, when does the action accrue under section 3706? The cause of action accrues only when a suit may be commenced upon it, and not simply when the debt may be due or an injury may have been suffered. The only cause of action on which the libelants could commence to enforce their lien was one in the District Court.

The Heine v. Trevor, 4 Wall. 555.

The J. E. Rumbell, 148 U. S. 1.

No action could be commenced in the United States District Court during the pendency of the receivership. The mere filing of a libel is not the commencement of an action in admiralty, for an admiralty court has no jurisdiction of any kind whatsoever until it obtains the custody of the res.

Further, section 20 of Hill's Code of Oregon provides expressly that the time of the stay in any action by injunction or statutory prohibition shall not be part of the time

limited for the commencement of the action. By the injunction referred to in this action is not meant an injunction obtained in a suit commenced against the litigant, but is an injunction or suit as the result of any legal proceeding.

Hoff v. Funckenstein, 54 Cal. 233.

Von Saxe v. Tretz, 72 N. Y. 548.

In the California case it is said, page 235, that the theory of the California Statute of Limitations, containing a provision similar to that of the Oregon act, is that the creditor has a given time, on any day of which he may of his own volition commence an action. Note particularly the remarks in the California case about the right of the litigant in that case to apply to the United States District Court for leave to sue, and the answer which the California court made to the contention found in the discussion on page 235, namely, that while the litigant might so have applied and might have been allowed to sue, yet, nevertheless, his application might have been refused, and so long as the litigant could not of his own volition have commenced the suit the statute of limitations would not and could not run against him.

In the present case, the only court in which the libelants could have commenced their action to enforce their lien was the District Court of the United States, and that court on the application of persons similarly situated refused to allow the action to be commenced during the pendency of the receivership. The United States District Court could not, without a violation of the principles of comity governing that court, have seized the vessel, and the only way in which the libelants could have commenced their suit would have been to obtain leave from the Circuit Court of Benton County.

The claimants would seem to insist that a proceeding ***in rem*** is commenced when the libel is filed, and that had the libelants Young and Raabe filed their libels within a year the Statute of Limitations would not have run. It is undoubtedly true that the first step in commencing a suit in admiralty is to file a libel, but this is not the commencement of a suit within the meaning of the Statutes of Limitations. It is a familiar principle of the law of limitations that a suit is only commenced when the writ is issued out and delivered to the officer with a ***bona fide*** intention to have it served. ***Angel on Limitations***, 312. Without the custody of the ***res*** an admiralty court has no jurisdiction for any purpose whatsoever. ***The Hungary***, 41 Fed. Rep. 109. Where for any reason the res cannot be seized or is not properly seized, the

invariable decree in a court of admiralty is to dismiss the libel.

Examine further the argument of the claimants. A vessel can be seized in any court of admiralty within whose jurisdiction it may be found. What right has the intending libelant to deposit his libel more or less secretly in any admiralty court, and then wait patiently year after year until the vessel by some strange chance comes into the jurisdiction selected by the libelant? Would such action give any notice to any one? And within what jurisdictions must a man search the titles of a ship to see whether there are outstanding liens or claims against her? Owing to the peculiarity of the jurisdiction, admiralty applies the doctrine of laches rather than the strict letter of any statute of limitations. Suppose the home port of a vessel was Portland, and she should have been taken over to Puget Sound and there operated for a number of years, passing through various hands, could a libelant defend against the application of the doctrine of laches by stating that soon after his claim had accrued he had filed a libel in this court? The plain answer to such a proposition is that the vessel has always been within easy reach of the process of a neighboring court. Suppose the vessel had constantly remained on Puget Sound, and that then the libelant should go over and undertake to seize the vessel in the District of Washington, would the fact that the libelant had filed his libel here prevent the Statute of Limitations from running against him, and would the filing of the libel here enable the claimant in the District of Washington to plead the pendency of a suit in any other jurisdiction? Even if the filing of the complaint at common law constituted the commencement of a suit, the nature of admiralty jurisdiction would prevent any such rule from being applied by an admiralty court. On the contrary, at common law a suit is only commenced when the writ is issued, and there is an actual ***bona fide*** attempt to have it served.

For the reasons already stated, the decrees of the court below should be affirmed.

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